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## **Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1**

### **Kenya\***

The present report is a summary of 19 stakeholders' submissions<sup>1</sup> to the universal periodic review. It follows the structure of the general guidelines adopted by the Human Rights Council. It does not contain any opinions, views or suggestions on the part of the Office of the United Nations High Commissioner for Human Rights (OHCHR), nor any judgement or determination in relation to specific claims. The information included herein has been systematically referenced in endnotes and, to the extent possible, the original texts have not been altered. Lack of information or focus on specific issues may be due to the absence of submissions by stakeholders regarding these particular issues. The full texts of all submissions received are available on the OHCHR website. The report has been prepared taking into consideration the four-year periodicity of the first cycle of the review.

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\* The present document was not edited before being sent to United Nations translation services.

## **I. Background and framework**

### **A. Scope of international obligations**

1. The Kenya Stakeholders' Coalition for the Universal Periodic Review (KSC) reported that Kenya has yet to ratify several fundamental human rights instruments, including the Optional Protocols to the International Covenant on Civil and Political Rights, to the International Covenant on Economic, Social and Cultural Rights (OP ICESCR), to the International Convention on the Rights of Persons with Disabilities (OP CRPD) and to the Convention on Elimination of All Forms of Discrimination Against Women (OP CEDAW).<sup>2</sup> The Kenya National Commission on Human Rights (KNHRC) recommended that Kenya accede to the Optional Protocol to the Convention Against Torture, Cruel, Inhumane or Degrading Treatment or Punishment (OP CAT).<sup>3</sup> KSC recommended ratifying and implementing the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa.<sup>4</sup> The Open Society Justice Initiative (OSJI) recommended that Kenya consider accession to the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.<sup>5</sup> Joint submission 3 (JS3) stated that Kenya should ratify ILO Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries.<sup>6</sup>

### **B. Constitutional and legislative framework**

2. KSC reported that rights included in the ICCPR are yet to be entrenched and recognized as part of the Bill of Rights enshrined in the Constitution.<sup>7</sup> KNCHR recommended that Kenya pass legislation to domesticate CAT.<sup>8</sup>

3. KNCHR indicated that Kenya is reviewing its Constitution, which will expectedly include an explicit protection of economic, social and cultural rights, a better protection of vulnerable groups and a constitutional entrenchment for the KNCHR.<sup>9</sup>

4. Institute on Religion and Public Policy (IRPP) reported that the Constitution provides for the freedom of religion in public and private life, the separation of church and State and the equal treatment of all religions under the law. The Constitution prohibits any discrimination on the basis of religion and effectively prohibits forced religious conversion.

<sup>10</sup>

### **C. Institutional and human rights infrastructure**

5. The Chariots of Destiny Organisation and the Sexual Rights Initiative (CDO/SRI) reported that the National Council for Persons with Disabilities (NCPWD) was set up in 2004 and is in charge of formulating and developing measures and policies to prevent discrimination against persons with disabilities.<sup>11</sup> However, Disability Rights Promotion International-Kenya Project (DRPI-KP) reported that a lack of resources has impeded the implementation of NCPWD's strategic plan to carry its mandate.<sup>12</sup>

6. HelpAge Kenya and HelpAge International (HA-Kenya/HA-International) reported that the KNCHR is understaffed and is unable to respond quickly enough to accusations and attacks that take place outside of the capital.<sup>13</sup> Joint Submission 4 (JS4) recommended that Kenya reinforce the capacity of KNCHR by providing more financial and human resources and ensuring its independence in accordance with the Paris Principles.<sup>14</sup>

7. Joint submission 2 (JS2) noted that, since its inception in 2003, the Kenya Anti Corruption Commission has failed to generate a single prosecution and now faces closure.<sup>15</sup>

#### **D. Policy measures**

8. KSC recommended that Kenya finalize the Policy on Child labour and enhance programmes preventing children from joining the labour market and rescuing and rehabilitating children who are engaged in labour.<sup>16</sup>

9. KNCHR reported that initiatives to fight corruption have had minimal impact on reducing the levels of corruption.<sup>17</sup>

## **II. Promotion and protection of human rights on the ground**

### **A. Cooperation with human rights mechanisms**

#### **Cooperation with special procedures**

10. JS3 recommended that Kenya implement the recommendations of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and implement the concluding observations of the African Commission on Human and Peoples' Rights on Kenya's inaugural report.<sup>18</sup>

### **B. Implementation of international human rights obligations, taking into account applicable international humanitarian law**

#### **1. Equality and non-discrimination**

11. OSJI indicated that the Constitution provides for citizenship on a *jus sanguinis* basis and takes precedence over other laws relating to citizenship.<sup>19</sup> It mentioned that Kenyan law establishes gender discrimination in access to citizenship, does not guarantee an effective right of children to nationality and permits arbitrary deprivation of nationality.<sup>20</sup> Unrepresented Nations and Peoples Organization (UNPO) reported that, although the Constitution prohibits discrimination, subsection 4 allows gender discrimination with respect to marriage, divorce and devolution of property on death.<sup>21</sup> OSJI recommended that Kenya amend its Constitution relating to nationality to end discrimination on grounds of gender and to narrow the grounds for deprivation of citizenship.<sup>22</sup>

12. OSJI added that Kenya's systematic practice of discriminating against ethnic minorities in access to citizenship renders thousands of such persons stateless, notably the Kenyan Nubians, the Kenyan Somalis, and the Coastal Arabs.<sup>23</sup> OSJI recommended that Kenya resolve all protracted situations of statelessness.<sup>24</sup>

13. DRPI-KP reported that discrimination based on disability is not explicitly prohibited in the Constitution.<sup>25</sup> It recommended that Kenya improve legislation by entrenching anti-discrimination clauses in the Constitution and by amending the 2003 Persons with Disability Act.<sup>26</sup> DRPI-KP indicated that people living with disabilities face discriminatory attitudes, abuse, violence and inaccessible environments, which lead to segregation and exclusion in the family context, at work, at school and in society.<sup>27</sup> CDO/SRIU reported that there is lack of raising awareness about the existence of persons with disabilities in various arenas.<sup>28</sup> DRPI-KP recommended that Kenya develop disability legal support and arbitration services to improve advocacy efforts.<sup>29</sup>

14. CDO/SRI added that disabled women are subject to double discrimination and continue to miss out on education, training and employment and are often marginalized to the sidelines when key decisions are made.<sup>30</sup> DRPI-KP stressed that more than 86 per cent of the people with disabilities (PWDs) who were interviewed reported being treated unfairly and unequally on the basis of their disability.<sup>31</sup> CDO/SRI recommended that Kenya implement an employment policy including PWDs in key influential positions in government institutions.<sup>32</sup>

15. DRPI-KP stated that the welfare system supports only a small percentage of PWDs and that government services are unequally distributed between and among various disabilities.<sup>33</sup> It further reported that the right to autonomy of PWDs was often not respected and that they suffer from poverty.<sup>34</sup>

16. HA-Kenya/HA-International reported that the discrimination that older people experience is multi-dimensional, often related to issues of poverty, gender, literacy, belief and ethnic origin.<sup>35</sup>

## **2. Right to life, liberty and security of the person**

17. KNCHR commended Kenya for commuting from capital sentence to life imprisonment the terms of 4,000 inmates in August 2009.<sup>36</sup>

18. JS2 noted that the contested 2007 elections led to an explosion of politically motivated ethnic violence with widespread human rights violations by armed groups and police and security forces that left up to 1,500 dead and half a million internally displaced.<sup>37</sup> KNHRC reported that no adequate and effective measures have been taken to tackle the root causes of the violence.<sup>38</sup>

19. Society for Threatened People (STP) mentioned the reported unlawful killings and forced displacement in the Mount Elgon region during a joint police-military operation titled "Operation Okoa Maisha" ('Operation Save Life') in March 2008.<sup>39</sup> STP also indicated that, in 2008 alone, more than 450 members of the criminal Mungiki gang were extra-judicially killed in Nairobi.<sup>40</sup> KNCHR reported that no adequate steps have been taken to stem extrajudicial killings.<sup>41</sup>

20. The Kinoo Paralegal Network (KPN) recommended that Kenya develop and operationalise a national security policy to focus among other things on disarming the militia groups.<sup>42</sup>

21. JS3 reported that indigenous women face systematic injustices and abuse within their communities, including female genital mutilation, which was outlawed in 2001 but which is still widely practised among numerous indigenous communities.<sup>43</sup>

22. JS4 stated that, in spite of the 2000 Domestic Violence Bill and the 2006 Sex Offences Act, domestic violence is on the rise but leads to a low number of complaints.<sup>44</sup> JS4 recommended launching a national campaign to raise awareness on and implement the existing legislation and prosecute the perpetrators of domestic violence.<sup>45</sup>

23. According to HA-Kenya/HA-international, the belief in witchcraft is widespread in Kenya. Elderly are subject to accusations of witchcraft and subsequent violence but older women, especially those without adult male relatives to protect them, are particularly vulnerable to accusations. They are subjected to brutal beatings and, in the worst cases, being burnt alive.<sup>46</sup> HA-Kenya/HA-international recently assessed that there has been an upsurge in the number of killings of older people accused of witchcraft.<sup>47</sup> HA-Kenya/HA-International reported that there is a culture of impunity around these attacks and added that civil society's capacity to defend older people's rights and advocate for policy development and implementation is weak.<sup>48</sup> HA-Kenya/International recommended that Kenya ensure that killings related to witchcraft are treated as murder and are investigated, prosecuted and

punished accordingly, and put in place local human rights accountability mechanisms and train the police and judiciary to ensure the protection of older people within their communities.<sup>49</sup>

24. Global Initiative to End All Corporal Punishment on Children (GIEACPC) noted that corporal punishment is legal at home but that the current draft review of the Children's Act 2001 may repeal this provision. Corporal punishment is prohibited in schools and in the penal system while there is no explicit prohibition in alternative care settings.<sup>50</sup> GIEACPC recommended that Kenya enact prohibition of all corporal punishment, including through the repeal of article 127 of the Children Act.<sup>51</sup>

25. JS4 recommended that Kenya address conditions of detention, in particular in overcrowded prisons and conduct an in-depth prison reform.<sup>52</sup> KSC reported that many children under 4 years stay in prison together with their mothers who are remanded or convicted for petty offences and made recommendations to stop this situation.<sup>53</sup>

### 3. Administration of justice, including impunity and the rule of law

26. IRPP reported that since Kenyan independence, Islamic Shari'a law has been permitted in cases where all parties are Muslim and, by the 1967 Kadhis' Courts Act, jurisdiction has been limited to certain districts and to strictly civil matters of personal status, marriage, divorce, or inheritance. There are a total of 17 Kadhis whose hierarchy is appointed by the Judicial Service Commission.<sup>54</sup> IRPP added that, as a new Constitution is presently being written, the entrenchment of the Kadhis' courts has become a contentious issue between Muslims and Christians.<sup>55</sup>

27. JS2 stated that the government has yet to implement the recommendations of the Commission of Inquiry into Post Election Violence (CIPEV) which it established to investigate the 2007 post election violence, in particular setting up a national tribunal to try those responsible for orchestrating the violence.<sup>56</sup> KSC added that no witness protection mechanisms had been put in place, which contributed to the failure in starting criminal investigations.<sup>57</sup> JS4 noted that the government took steps towards peace building and in this regard, it made reference to the agreement of March 2008, known as Agenda Item 4, which called for the establishment of a number of bodies of inquiry to address justice and accountability and longer-term issues of governance and the rule of law. It also referred to the Kenyan Truth, Justice and Reconciliation Commission (TJRC), established in 2008, which is mandated to enquire into human rights violations, including community displacement, settlements, evictions, historical land injustices and the illegal or irregular acquisition of land, especially as these relate to conflict or violence.<sup>58</sup>

28. Eastern Paralegal Network (EPN) reported that access to justice is hampered by high costs in representation and court fees, distance of courts and police stations in the rural areas. It indicated that the court environment is hostile, strange and intimidating due to the complex language and procedures which the lay citizen does not understand due to their legal illiteracy and lack of formal education. This further erodes their confidence in the administration of justice.<sup>59</sup>

29. EPN recommended developing an administration of justice policy, which would address principles of access to justice and public interest education. EPN further recommended the decentralization of the judiciary through the creation of the Small Claims Court and Courts of Petty Session and the need to recognize the community justice systems.<sup>60</sup> JS4 recommended that Kenya take due reform measures to address corruption within the judicial system that seriously impedes the fight against impunity and;<sup>61</sup> amend the 2008 TJRC Bill which allows conditional amnesty to persons who make full disclosure of all the relevant facts relating to acts associated with gross human rights violations and economic crimes.<sup>62</sup>

30. KSC recommended that Kenya amend the Constitution and the Children Act to provide safeguards for children in conflict with the law, introduce Child Protection Units in all police stations and introduce proper police accountability.<sup>63</sup>

#### **4. Right to privacy, marriage and family life**

31. JS4 recommended that Kenya develop a policy addressing the specific challenges faced by single mothers.<sup>64</sup>

32. Joint Submission 1 (JS1) recommended that Kenya bring its legislation into conformity with its international human rights obligations by repealing all provisions which criminalise sexual activity between consenting adults of the same sex.<sup>65</sup> KSC further recommended that Kenya pass a comprehensive Anti-Discrimination Law affording protection to all individuals irrespective of their sexual orientation or gender identity.<sup>66</sup>

#### **5. Freedom of religion or belief, expression, association and peaceful assembly and right to participate in public and political life**

33. IRPP reported that, in July 2009, the Presidential Action Committee to Address Specific Concerns of the Muslim Community in regard to alleged harassment and/or discrimination, issued its final report in which it outlined the accreditation of Islamic colleges, the permitting of schoolgirls to wear the hijab, the establishment of a High Court in the Northern Province to facilitate justice, and the establishment of a Ministry of State for Development of Northern Kenya to catalyze economic development. It added that President Kibaki has given joint authority to the Truth, Justice and Reconciliation Commission and the National Cohesion and Integration Commission to deal with the unjust rendition of Muslims.<sup>67</sup>

34. KNCHR recommended criminalizing hate speech not just on the basis of ethnicity, but also on other grounds such as gender, religion and disability.<sup>68</sup>

35. Article 19 expressed concerns at the phrasing of article 79(1) of the Constitution, as it does not include the right to seek information. In addition article 79(2) of the Constitution provides for restrictions to the freedom of expression, which are broader than those permitted under international law.<sup>69</sup> Article 19 recommended reviewing and amending the Constitution so that it protects the right of freedom of expression, including freedom of information in compliance with international and regional human rights standards.<sup>70</sup>

36. Article 19 indicated that Kenya lacks a comprehensive protection of the right to freedom of information. The latest draft of the right to freedom of information Law from 2007 has still to be introduced to Parliament and in the absence of this legislation, most journalists endure problems of acquiring information.<sup>71</sup> Article 19 referred to a series of laws, which contribute to restrict or threaten freedom of expression, such as the 2002 Books and Newspaper Act, the 1967 Preservation of Public Security Act or the 2007 Media Act.<sup>72</sup> JS2 made reference to the Official Secret Act, which is used to harass journalists to reveal sources.<sup>73</sup> It stated that the 2002 Books and Newspaper Act restricts smaller, alternative publications which are hardest pushed to meet its financial requirements for their registration.<sup>74</sup>

37. Article 19 recommended that Kenya amend the 2007 Media Act, so as to ensure optimal independence of the Media Council of Kenya.<sup>75</sup> Front Line (FL) reported that this law introduced a 13-member Media Council, with authority to grant and withdraw the accreditation of journalists, which seeks to monitor and regulate the media in a much stricter form.<sup>76</sup>

38. JS2 and Article 19 indicated that defamation (or criminal libel) remains a criminal offence despite assurances by the Attorney General in a 2005 case that the relevant law

would be no longer be used.<sup>77</sup> Article 19 stated that the Penal Code also offers special protection to the President, Cabinet Ministers and Parliament.<sup>78</sup> JS2 reported that critical books are not available due to fear of litigation under libel law.<sup>79</sup> Article 19 and JS2 recommended decriminalising defamation.<sup>80</sup>

39. Article 19 reported that, although the press is relatively free, tensions between the government and the media remain and take the form of threats, insults and legal challenges resulting in the imposition of fines. There has also been a case where a journalist was murdered and no effective investigation took place.<sup>81</sup> JS2 provided examples of a series of events and legal proceedings in recent years which have been read as direct warnings to the media in general and certain journalists in particular.<sup>82</sup> It also reported that many journalists concede that certain subjects are considered no-go due to fear of retaliation.<sup>83</sup> JS2 added that there is also some evidence to suggest that those who write for publications outside the mainstream press are more likely to be harassed by the authorities.<sup>84</sup>

40. According to Article 19, there were serious failures within the media themselves during the 2007-2008 election crisis and riots (self censorship and inadequate treatment of the politically motivated violence and ethnic divisions). The Government introduced severe restrictions on the media that have had a long standing impact on the freedom of expression. In numerous interviews, prominent reporters and editors complained that they received death threats by text message and e-mail throughout January – February 2008 allegedly coming from Kikuyu militants and state security agents.<sup>85</sup> FL and JS2 reported that, following the controversial election results, the government banned live broadcasting by the Kenyan media in order to silence the denunciation of the post-electoral violence.<sup>86</sup> Article 19 recommended that Kenya ensure that all cases of harassment against the media are investigated fully and that perpetrators are actively prosecuted whenever possible.<sup>87</sup> JS2 recommended that Kenya carry out a full and impartial investigation into the murders of a journalist and human rights defenders in early 2009, and ensure that those responsible are brought to justice.<sup>88</sup> JS2 also recommended that Kenya refrain from imposing bans on the media.<sup>89</sup>

41. FL reported that the Constitution protects the right to freedom of assembly and association. However, a number of defenders have been arrested by police or security forces for their participation in peaceful protests and charged with 'taking part in illegal demonstration' or 'causing disturbance'. Several human rights organizations reportedly had their office searched, properties confiscated and staff arrested.<sup>90</sup> FL provided examples of such events.<sup>91</sup> FL also indicated that human rights defenders reported several instances where the judicial system was used against them in retaliation for their human rights work.<sup>92</sup>

42. FL mentioned that, in the aftermath of the visit by the United Nations Special Rapporteur on extra-judicial, arbitrary and summary executions in February 2009, defenders who have passed information to the UN expert have been specifically targeted. At least three human rights defenders have been murdered and about fifteen have had to go into hiding or in exile.<sup>93</sup> KNCHR reported that all those who interacted with the Special Rapporteur received threatening phone calls or text messages.<sup>94</sup> FL recommended that Kenya take immediate measures to ensure the safety and protection of human rights defenders and take immediate measures to tackle the problem of impunity for attacks and abuses perpetrated against human rights defenders.<sup>95</sup>

43. JS2 stated that a number of writers have been arrested for taking part in peaceful protests since 2007 and that the charges brought in these cases are generally "unlawful assembly" or "breach of the peace".<sup>96</sup> JS2 stated that the right to freedom of assembly and association is protected under the Kenyan Constitution but that, since the post-election violence, there has been a lack of clarity about the legality of public demonstrations.<sup>97</sup> It

recommended that Kenya clarify the procedure for notifying the police ahead of public demonstrations.<sup>98</sup>

44. Article 19 reported that, although the use of the information and communication technologies is relatively unrestricted in Kenya, the government engaged in ad hoc efforts during 2008 to limit access to some content, including material related to corruption.<sup>99</sup>

45. KSC and KNCHR reported that women are particularly grossly underrepresented in decision making positions, in the political arena, in government appointments, in national institutions and local levels and recommended that Kenya implement the policy to fulfill the 30 per cent women representation in leadership and decision making positions.<sup>100</sup>

46. KSC indicated that all political parties failed to nominate persons with disabilities as MPs after the 2007 General Elections and that ethnic minorities and indigenous communities too have been underrepresented due to their numerical disadvantage.<sup>101</sup>

## **6. Right to work and to just and favourable conditions of work**

47. KSC reported that the current legal framework offers no protection of the informal sector on an equal basis with the formal sector, in spite of the introduction of the new labour law regime. There is also a gap in the protection of workers' rights to safe and favourable working conditions further to the amendments of the Work Injuries Benefits Act, 2007.<sup>102</sup>

48. KSC stated that the youth account for 72 per cent of the unemployed, most of them having no job training other than formal schooling. Most of government initiatives are marred with corruption owing to lack of transparency and accountability, notably regarding the Youth Enterprise Development Fund.<sup>103</sup>

49. KSC recommended that Kenya implement the recommendations of the High Level Taskforce on the Prison Crisis, particularly in relation to improving the working conditions of prison wardens.<sup>104</sup>

## **7. Right to social security and to an adequate standard of living**

50. KSC indicated that it is reported that 3.8 million Kenyans are in the grip of hunger and made recommendation to tackle this issue.<sup>105</sup> KNCHR recommended that Kenya guarantee the right to food in the Constitution.<sup>106</sup> JS4 reported that the agricultural sector faces challenges related to productivity, land use, markets and value addition and recommended that Kenya increase expenditure on agriculture.<sup>107</sup>

51. KSC reported that, despite having well defined National Health Policies, affordability and physical accessibility remain major hindrances to quality healthcare.<sup>108</sup> KSC also recommended that Kenya, in its negotiations, deliberately ensure the protection of the right to health in the Economic Partnership Agreements.<sup>109</sup>

52. While welcoming efforts to address HIV/AIDS, JS4 stressed that Kenya has not achieved its promise of putting at least 24,000 people living with AIDS on Antiretroviral every year. In addition, HIV/AIDS affected persons were on the increase. JS4 also reported that the support systems for widows and orphans with HIV/AIDS are limited.<sup>110</sup> CDO/SRI referred to the specific situation of the estimated 10 per cent of persons with disabilities living with HIV/AIDS. Despite the Priority areas of the National AIDS Strategic Plan 2006–2010, there is a need to improve on treatment and care, protection and rights access to effective services.<sup>111</sup>

53. JS4 recommended that Kenya provide in all public health centres and hospitals accessible and free Antiretroviral and counselling services and better care to reach the growing number of persons infected with HIV and strengthen the fight against



stigmatization and discrimination, and revise prevention, sensitization and education programmes directed at behaviour change.<sup>112</sup> CDO/SRI recommended that Kenya implement strategies and programs to change health care providers' attitudes toward disabled patients, especially in public health centres in order to minimise their fear and prejudice towards seeking assistance in government run institutions.<sup>113</sup>

54. KSC recommended enacting the Reproductive Health Bill in order to reduce maternal and infant mortality rate.<sup>114</sup>

55. KSC noted that there are no legislative provisions that recognize the right to adequate housing and that a substantial proportion of the urban population live in informal settlements with no adequate infrastructure.<sup>115</sup> JS4 recommended that Kenya effectively implement the current 2004 National Housing policy.<sup>116</sup> KPN recommended that the Housing Policy should be implemented in the rural-urban areas to ensure the houses being constructed are of good quality.<sup>117</sup> KNCHR recommended that Kenya legislate procedures to ensure that evictions are undertaken humanely.<sup>118</sup>

56. JS4 mentioned that access to water is lower in rural areas and significantly lower among the poor.<sup>119</sup> EPN indicated that the National Irrigation Board together with the Ministry of Environment should be able to control the use of water from the major rivers upstream and thereby food security for the people of Kenya in general especially during drought.<sup>120</sup> EPN recommended that Kenya develop a national water management and a food security policy.<sup>121</sup> KPN recommended the development of a water irrigation policy.<sup>122</sup> KSC also addressed this issue.<sup>123</sup>

57. EPN reported on the environmental damages created by sand harvesting at the river banks and at the very low prices at which sand is sold by harvesters to brokers, which leaves harvesters in poverty.<sup>124</sup> EPN recommended that the 2007 sand harvesting rules be fully implemented to curb environmental degradation by the National Environmental Management Authority (NEMA). KSC indicated that essential ecosystems have continued to be adversely affected by human-instigated practices resulting in environmental degradation, such as the Mau Forest Complex.<sup>125</sup> KSC recommended that Kenya increase its budgetary allocation to the National Environmental Management Authority (NEMA), in charge of enforcing the Environment Management and Coordination Act (EMCA).<sup>126</sup> JS4 recommended that Kenya develop a comprehensive policy on environmental conservation.<sup>127</sup>

## **8. Right to education and to participate in the cultural life of the community**

58. EPN reported that free primary education was introduced in 2003 and free secondary education in 2008.<sup>128</sup> JS4 reported that this resulted in overstretched facilities, overcrowding in schools, scarcity of schools in some regions and other costs for families.<sup>129</sup> EPN mentioned similar issues in lower Eastern Province.<sup>130</sup>

59. EPN recommended that Kenya develop an educational policy that ensures that the quality of education is guaranteed.<sup>131</sup> KSC further recommended that Kenya establish a legal framework to regulate and ensure that quality education is compulsory and accessible to all, especially poor, marginalized and vulnerable groups; recruit more teachers to meet the demand or alternatively employs a multi-shift programme in schools; establish stricter measures, proper accountability, transparency mechanisms and greater public participation in the administration of bursary and education funds.<sup>132</sup> KSC also recommended that Kenya finalise the Special Needs Education Policy to ensure that all children with disabilities receive necessary support.<sup>133</sup>

## 9. Minorities and indigenous peoples

60. JS3 indicated that the Constitution protects a number of fundamental rights; however, many of these rights are not being protected when it comes to indigenous peoples.<sup>134</sup> KSC recommended that Kenya infuse minority and indigenous rights within the Constitution's Bill of Rights and the National Action Plan on Human Rights.<sup>135</sup> UNPO also recommended that constitutional reform promote group rights and adopt policy which furthers the political recognition and participation of unrepresented groups such as the Maasai.<sup>136</sup>

61. JS3 stated that violence and serious insecurity is widespread in the pastoral areas of Kenya. It added that the government makes no serious attempt to prevent it or bring those responsible to justice.<sup>137</sup>

62. Cultural Survival (CS) provided detailed information on the situation of Samburu people after Borana tribal members and raiders from a neighboring country allegedly stole cattle and abducted children in February 2009<sup>138</sup>, which resulted in massive and well-organized attacks on Samburu villages by combined police and military forces and the use of government-funded mercenaries from a neighbouring country. In addition to casualties among the population (including women and children), the people's only food source, cattle, were confiscated. All of this violence and intimidation appears to be motivated by government oil leases recently awarded to foreign companies to drill on Samburu land.<sup>139</sup>

63. JS3 recommended that Kenya investigate the cases of violent conflicts, bring the perpetrators of violence to justice, take the necessary steps to compensate victims and put in place effective conflict prevention and conflict resolution measures.<sup>140</sup>

64. JS3 recommended that Kenya recognize in its National Land Policy the usefulness of pastoralist lands and the way they are being utilized; include pastoralist lands in the category of occupied land in this Policy and recognize pastoralist and indigenous communities' activities on their ancestral lands.<sup>141</sup> KSC made also recommendation in this regard.<sup>142</sup>

65. JS3 reported that the Ogiek, a traditional hunting/gathering community, are at risk of being evicted from the Mau Forest, which they have used in a sustainable manner for centuries. It recommended that Kenya protect the rights and future existence of the Ogiek people as a tribe.<sup>143</sup> UNPO also reported on forced eviction of Maasai from the Mau Forest.<sup>144</sup> JS3 informed that the creation of the "Nairobi Metropolitan Region" is very unfavourable to the adjacent pastoral community of the Maasai and recommended that Kenya refrain from extending the capital into the Maasai people's traditional lands.<sup>145</sup> UNPO also reported on the impact of pollution, environmental degradation and tourism on the situation of Maasai and made recommendations in this regard.<sup>146</sup>

66. JS3 stated that the Constitution and the 1989 census omit the smaller indigenous tribes such as the Ogiek, El Molo, Watta, Yakuu and their existence and identity are therefore not legally recognized or protected. In addition, the Ilchamus, a marginalized indigenous pastoralist community, has taken the government of Kenya to court to demand its constitutional right to a separate constituency that will ensure their right of political representation. Although the Ilchamus won the case, the government has failed to implement the High Court ruling.<sup>147</sup> UNPO reported that the Maasai, being numerically small, are prevented from engaging in political activities at the national or provincial levels.<sup>148</sup> UNPO added that lack of data disaggregated by ethnicity keeps minority issues hidden and unaddressed.<sup>149</sup> It recommended that Kenya ensure the next census be disaggregated by ethnicity to build a better picture of the composition of the Kenyan population and tailor policy according to specific groups' needs and adopt an inclusive national strategy for the treatment of minorities.<sup>150</sup>

67. JS3 reported that the mortality rate in indigenous communities is increasing due to the inadequacy of public health facilities. Areas inhabited by indigenous communities are poor and marginalized and the government has given very limited attention to their development.<sup>151</sup> UNPO made similar comments relating to the Maasai with particular concern regarding access to HIV services and recommended that Kenya take affirmative action to develop policies to initiate a poverty reduction strategy.<sup>152</sup>

#### **10. Migrants, refugees and asylum-seekers**

68. STP reported that some 280,000 refugees from a neighbouring country live in the Dadaab refugee camps. Since the beginning of 2009, more than 50,000 refugees have come to the camps.<sup>153</sup> STP reported on military recruitments of refugees made in these camps by a neighbouring country.<sup>154</sup>

#### **11. Internally displaced persons**

69. STP indicated that Kenya currently has some 400,000 IDPs.<sup>155</sup> KNCHR recommended that Kenya provide internally displaced persons (victims of 2007 post electoral violence) with adequate reparations and establish conditions and means that facilitate their resettlement and reintegration.<sup>156</sup> JS4 made similar recommendations.<sup>157</sup>

#### **12. Human rights and counter-terrorism**

70. IRPP reported that some Muslim leaders claim that the 2003 Suppression of Terrorism Bill and the establishment of the Anti-Terrorism Police Unit have resulted in religious discrimination against and the harassment of Muslims. This alleged discrimination has largely taken the form of denied passports and identity cards, but it also has resulted in the rendition of more than 100 suspected terrorists, including children, to a neighbouring country. They subsequently returned to Kenya after 18 months with visible scars of torture.<sup>158</sup>

### **III. Achievements, best practices, challenges and constraints**

N/A

### **IV. Key national priorities, initiatives and commitments**

N/A

### **V. Capacity-building and technical assistance**

N/A

## Notes

- <sup>1</sup> The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: [www.ohchr.org](http://www.ohchr.org). (One asterisk denotes a non-governmental organization in consultative status with the Economic and Social Council. Two asterisks denote a national human rights institution with “A” status)

*Civil society*

Article 19	Article 19, London, United Kingdom;*
CDO/SRI	The Chariots of Destiny Organisation; Sexual Rights Initiative, joint submission;
CS	Cultural Survival, Cambridge, MA, United States of America;*
DRPI-KP	Disability Rights Promotion International-Kenya Project, <i>composed of</i> African Union of the Blind (A.F.U.B.); Disability Rights Promotion International (D.R.P.I.); Kenya Union of the Blind (K.U.B.); Centre for Disability Rights Education & Advocacy (CREAD); Kenya, joint submission;
EPN	Eastern Paralegal Network, Matuu, Kenya;
FL	Front Line, Dublin, Ireland;*
GIEACPC	Global Initiative to End All Corporal Punishment on Children, London, United Kingdom;
HA-Kenya/International	HelpAge Kenya, Nairobi, Kenya; HelpAge International*, London, United Kingdom, joint submission;
IRPP	Institute on Religion and Public Policy, Washington, D.C., United States of America;
Joint submission 1 (JS1)	ARC International (ARCI); International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA); ILGA Europe*; Pan African ILGA; Geneva, Switzerland; joint submission;
Joint Submission 2 (JS2)	International PEN*; International Publishers Association*; Pen Kenyan Centre, Index of Censorship, London, United Kingdom, joint submission;
Joint submission 3 (JS3)	Mainyoito Pastoralist Integrated Development Organization (MPIDO); Endorois Welfare Council; Pastoralist Integrated Support Programme; Ogiek People Development Programme; Maa Civil Society Forum; Ndugu Zangu Charitable Trust; Ilchamus Development Consortium Trust; The Pastoralists’ and Hunter Gatherers’ Ethnic Minorities Network; Centre for Minority Rights Development; International Work Group for Indigenous Affairs (IWGIA)*; Nairobi, Kenya, joint submission;
Joint submission 4 (JS4)	The Kenyan Movement of Catholic Professional (KMCP); Franciscans International*; Pax Romana (International Catholic Movement for Intellectual and Cultural Affairs and International Movement of Catholic Students)*; Edmund Rice International; Marist Foundation for International Solidarity (FMSI); Joint submission;
KPN	Kinoo Paralegal Network, Kikuyu, Kenya;
KSC	Kenya Stakeholders’ Coalition for the Universal Periodic Review (coalition composed of 97 national and international organisations and institutions); Nairobi, Kenya, Joint submission;
OSJI	The Open Society Justice Initiative, New York, United States of America;
STP	Society for Threatened Peoples, Göttingen, Germany*;
UNPO	Unrepresented Nations and Peoples Organization, The Hague, The Netherlands.

*National human rights institution*

KNHRC The Kenya National Commission on Human Rights, Nairobi, Kenya.\*\*

<sup>2</sup> KSC, para. 2; see also Joint submission 4, para. 5.

<sup>3</sup> KNCHR, para. 9.

- <sup>4</sup> KSC, para. 38; see also KNCHR, para. 21 (b).  
<sup>5</sup> OSJI, para. 18.  
<sup>6</sup> Joint submission 3, p. 3; see also UNPO, p. 1 and 5.  
<sup>7</sup> KSC, para. 2.  
<sup>8</sup> KNCHR, para. 9.  
<sup>9</sup> KNCHR, para. 4.  
<sup>10</sup> IRPP, paras. 3–4.  
<sup>11</sup> CDO/SRI, paras. 3–4.  
<sup>12</sup> DRPI-KP, para. 11.  
<sup>13</sup> HA-Kenya/international, p. 2.  
<sup>14</sup> Joint submission 4, para. 43.  
<sup>15</sup> Joint submission 2, p. 2.  
<sup>16</sup> KSC, paras. 33–34.  
<sup>17</sup> KNCHR, paras. 10–11.  
<sup>18</sup> Joint submission 3, p. 3.  
<sup>19</sup> OSJI, para. 5.  
<sup>20</sup> OSJI, paras. 6–11.  
<sup>21</sup> UNPO, p. 4.  
<sup>22</sup> OSJI, para. 18. See also KSC, paras. 51–52; KNCHR, para. 21(d)  
<sup>23</sup> OSJI, paras. 12–16.  
<sup>24</sup> OSJI, para. 18.  
<sup>25</sup> DRPI-KP, para. 10.  
<sup>26</sup> DRPI-KP, para. 19.  
<sup>27</sup> DRPI-KP, para. 14.  
<sup>28</sup> CDO/SRI, para. 5.  
<sup>29</sup> DRPI-KP, para. 19.  
<sup>30</sup> CDO/SRI, para. 9; see also DRPI-KP, para. 15.  
<sup>31</sup> DRPI-KP, para. 12.  
<sup>32</sup> CDO/SRI, p. 4; see also KNCHR, para. 20 and 21(c).  
<sup>33</sup> DRPI-KP, para. 13.  
<sup>34</sup> DRPI, paras. 17–18.  
<sup>35</sup> HA-Kenya/International, p. 1.  
<sup>36</sup> KNCHR, para. 7.  
<sup>37</sup> Joint submission 2, p. 2; see also STP, p. 1.  
<sup>38</sup> KNCHR, para. 5.  
<sup>39</sup> STP, p. 1.  
<sup>40</sup> STP, p. 2.  
<sup>41</sup> KNCHR, para. 8.  
<sup>42</sup> KPN, p. 3.  
<sup>43</sup> Joint submission 3, p. 8.  
<sup>44</sup> Joint submission 4, paras. 14–15.  
<sup>45</sup> Joint submission 4, paras. 16–17.  
<sup>46</sup> HA-Kenya/International, p. 1; see also KSC, paras. 47–48.  
<sup>47</sup> HA-Kenya/International, p. 2.  
<sup>48</sup> HA-Kenya/International, p. 2.  
<sup>49</sup> HA-Kenya/International, p. 3. See also IRPP, para. 10  
<sup>50</sup> GIEACPC, p. 2.  
<sup>51</sup> GIEACPC, p. 1.  
<sup>52</sup> Joint submission 4, paras. 47–50.  
<sup>53</sup> KSC, paras. 7-8.  
<sup>54</sup> IRPP, para. 7.  
<sup>55</sup> IRPP, paras. 8–9.  
<sup>56</sup> Joint submission 2, p. 2; See also KNCHR, para. 6; STP, p. 2.  
<sup>57</sup> KSC, paras. 5–6.  
<sup>58</sup> Joint submission 4, para. 35  
<sup>59</sup> EPN, p. 4.

- <sup>60</sup> EPN, p. 4.  
<sup>61</sup> Joint submission 4, paras. 36, 40; see also KNCHR, para. 12.  
<sup>62</sup> Joint submission 4, para. 39  
<sup>63</sup> KSC, para. 4.  
<sup>64</sup> Joint Submission 4, paras. 12–13.  
<sup>65</sup> Joint Submission 1, p. 2; see also KNCHR, para. 21(e).  
<sup>66</sup> KSC, para. 46; see also KNCHR, para. 21(e).  
<sup>67</sup> IRPP, para. 12.  
<sup>68</sup> KNCHR, para. 6.  
<sup>69</sup> Article 19, para. 3.  
<sup>70</sup> Article 19, para. 13.  
<sup>71</sup> Article 19, para. 4; see also Joint submission 2, p. 5.  
<sup>72</sup> Article 19, para. 5.  
<sup>73</sup> Joint submission 2, p. 5; see also KSC, paras. 41–42.  
<sup>74</sup> Joint submission 2, p. 6.  
<sup>75</sup> Article 19, para. 13.  
<sup>76</sup> FL, p.2; see also Article 19, p.2.  
<sup>77</sup> Joint submission 2, p. 4–5; Article 19, paras. 6 and 8.  
<sup>78</sup> Article 19, para. 7.  
<sup>79</sup> Joint submission 2, p. 7.  
<sup>80</sup> Article 19, para. 13, Joint submission 2, p. 10.  
<sup>81</sup> Article 19, para. 9; see also joint submission 2, p. 5.  
<sup>82</sup> Joint submission 2, p. 1 and 3–6.  
<sup>83</sup> Joint submission 2, p. 3.  
<sup>84</sup> Joint submission 2, p. 6.  
<sup>85</sup> Article 19, paras. 10–11.  
<sup>86</sup> FL, p. 2; Joint submission 2, p. 4.  
<sup>87</sup> Article 19, para. 13; see also Joint submission 2, p. 9.  
<sup>88</sup> Joint submission 2, p. 9; see also FL, p. 4.  
<sup>89</sup> Joint submission 2, p. 10.  
<sup>90</sup> FL, p. 2.  
<sup>91</sup> FL, pp. 2–3.  
<sup>92</sup> FL, p. 3.  
<sup>93</sup> FL, p. 4.  
<sup>94</sup> FL, pp. 3–4; see also joint submission 2, p. 2, 8.  
<sup>95</sup> FL, p. 4.  
<sup>96</sup> Joint submission 2, pp. 8–9.  
<sup>97</sup> Joint submission 2, p. 9.  
<sup>98</sup> Joint submission 2, p. 10.  
<sup>99</sup> Article 19, para. 12.  
<sup>100</sup> KSC, paras. 37–38; KNCHR, para. 21(b).  
<sup>101</sup> KSC, paras. 37–38.  
<sup>102</sup> KSC, paras. 17–18.  
<sup>103</sup> KSC, paras. 19–20.  
<sup>104</sup> KSC, para. 10.  
<sup>105</sup> KSC, paras. 13–14.  
<sup>106</sup> KNCHR, para. 17(e)  
<sup>107</sup> Joint submission 4, paras. 7, 11.  
<sup>108</sup> KSC, paras. 21–22.  
<sup>109</sup> KSC, para. 24.  
<sup>110</sup> Joint submission 4, paras. 22–27.  
<sup>111</sup> CDO/SRI, para. 6.  
<sup>112</sup> Joint submission 4, paras. 28–29.  
<sup>113</sup> CDO/SRI, p. 4.  
<sup>114</sup> KSC, paras. 25–26; see also KNCHR, para. 17 (d)  
<sup>115</sup> KSC, paras. 27–28; see also Joint submission 4, paras. 2–5.

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- 116 Joint submission 4, para. 3.  
117 KPN, p. 3.  
118 KNCHR, para. 17 (b).  
119 Joint submission 4, para. 6. See also EPN, p. 2.; KPN, p. 2.  
120 EPN, p. 4.  
121 EPN, p. 2; see also Joint submission 4, para. 9, KNCHR, para. 17(e).  
122 KPN, p. 2.  
123 KSC, paras. 15–16.  
124 EPN, p. 3.  
125 KSC, para. 11.  
126 KSC, para. 12.  
127 Joint submission 4, para. 8.  
128 EPN, p. 2.  
129 Joint submission 4, paras. 18-19.  
130 EPN, pp. 2–3.  
131 EPN, p. 3.  
132 KSC, paras. 29–30.  
133 KSC, paras. 31–32; see also Joint submission 4, paras. 20–21; KNCHR, para. 17(a).  
134 Joint submission 3, p. 3.  
135 KSC, paras. 49–50.  
136 UNPO, p. 5  
137 Joint submission 3, p. 4.  
138 CS, p. 2.  
139 CS, p. 1–5; see also Joint submission 3, p. 8; KSC, paras. 43–44.  
140 Joint submission 3, p. 4.  
141 Joint submission 3, p. 5.  
142 KSC, para. 36.  
143 Joint submission 3, p. 6.  
144 UNPO, p. 3.  
145 Joint submission 3, p. 6.  
146 UNPO, p. 3 and 5.  
147 Joint submission 3, p. 6-7.  
148 UNPO, p. 2.  
149 UNPO, p. 2.  
150 UNPO, p. 5.  
151 Joint submission 3, p. 7.  
152 UNPO, p. 5.  
153 STP, p. 2.  
154 STP, p. 2.  
155 STP, p. 2.  
156 KNHRC, para. 6.  
157 Joint submission 4, para. 4.  
158 IRPP, para. 11.
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